

not inconsistent with the regulations in this part 75.

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## **PART 81—SECRETARIAL ELECTION PROCEDURES**

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### Subpart A—Purpose and Scope

#### § 81.1 What is the purpose of this part?

This part prescribes the Department's procedures for authorizing and conducting elections when Federal statute or the terms of a tribal governing document require the Secretary to conduct and approve an election to:

- Adopt, amend, or revoke tribal governing documents; or
- Adopt or amend charters.

#### § 81.2 When does this part apply?

(a) This part applies only to federally recognized tribes, in the circumstances shown in the following table.

If a tribe wants to . . .	And . . .
(1) Adopt a new governing document to reorganize under Federal statute.	The Federal statute requires an election before or after Secretarial approval.
(2) Adopt a new governing document to reorganize outside Federal statute.	The governing document requires approval under the Secretary's general authority to approve.

If a tribe wants to . . .	And . . .
(3) Amend or revoke a governing document adopted under Federal statute.	The Federal statute requires an election and approval for amendment or revocation.
(4) Amend or revoke a governing document adopted outside Federal statute.	The governing document requires Secretarial approval of an amendment or revocation.
(5) Ratify a federal charter of incorporation.	The charter requires Secretarial approval or is being ratified under the Oklahoma Indian Welfare Act (OIWA).
(6) Amend a federal charter of incorporation.	The charter requires a Secretarial election to amend.
(7) Take other action . . . . .	A Federal statute or tribal law requires a Secretarial election in order to take that action.
(8) Remove the requirement for a Secretarial approval from a governing document.	A Federal statute or tribal law requires a Secretarial election in order to take that action.

(b) Secretarial elections will be conducted in accordance with the procedures in this part unless the amendment article of the tribe's governing document provides otherwise and is not contrary to Federal voting qualifications or substantive provisions, in which case the provisions of those documents shall rule, where applicable.

(c) If the amendment provisions of a tribal governing document have become outdated and the amendment cannot be effected under them, and the recognized tribal governing body requests a Secretarial election, the Bureau may authorize a Secretarial election under this part to amend the documents.

#### § 81.3 Information collection.

The information collection requirements contained in this part are approved by the Office of Management and Budget under the Paperwork Reduction Act of 1995, 44 U.S.C. 3507(d), and has been assigned OMB control number 1076-0183. This information is collected when, under Federal statute or the tribe's governing documents, the Secretarial election is authorized to adopt, amend, or revoke governing documents; or adopt or amend charters. This information is required to obtain or retain benefits. A Federal agency may not collect or sponsor an information collection without a valid OMB control number.

**Subpart B—Definitions****§ 81.4 What terms do I need to know?**

For purposes of this part:

*Absentee ballot* means a ballot the Secretarial Election Board provides to a registered voter, upon request, to allow him or her to vote by mail even though polling sites are used.

*Amendment* means any modification or change to one or more provisions of an existing governing document or charter.

*Applicable law* means any treaty, statute, Executive Order, regulation, or final decision of a Federal court, which is applicable to the tribe.

*Authorizing Official* means the Bureau official with delegated Federal authority to authorize a Secretarial election.

*Bureau* means the Bureau of Indian Affairs, Department of the Interior.

*Business day* means a weekday (Monday through Friday), excluding Federal holidays.

*Cast* means the action of a registered voter, when the ballot is received through the mail by the Secretarial Election Board, or placed in the ballot box at the polling site.

*Charter* means a charter of incorporation issued under a Federal statute and ratified by the governing body in accordance with tribal law or, if adopted before May 24, 1990, by a majority vote in an election conducted by the Secretary.

*Day* means a calendar day. A Secretarial election may be held on a Saturday, Sunday or Federal holiday.

*Department* means the Department of the Interior.

*Director* means the Director of the Bureau of Indian Affairs or his or her authorized representative.

*Electioneering* means campaigning for or against the adoption, ratification, revocation or amendment of a proposed governing document or a charter.

*Eligible voter* means a tribal member who will be 18 years of age or older on the date of the Secretarial election (and, if the tribe's governing document imposes additional requirements for voting in a Secretarial election, also meets those requirements).

*Eligible Voters List* means a list of eligible voters, including their birthdates and their last known mailing address-

es. The Eligible Voters List is compiled and certified by the tribe's governing body or the Bureau if the Bureau maintains the current membership roll for the tribe.

*Federal statute* means the Indian Reorganization Act (IRA), 25 U.S.C. 476, 477, as amended, the Oklahoma Indian Welfare Act (OIWA), 25 U.S.C. 503, and any tribe-specific Federal statute that requires a Secretarial election for the adoption of a governing document.

*Final agency action* means the Authorizing Official's approval or disapproval of a Secretarial election or acknowledgment of the tribe's or petitioners' withdrawal of a request for Secretarial election, and is final for the Department.

*Governing document* means any written document that prescribes the extent, limitations, and manner in which the tribe exercises its sovereign powers.

*Local Bureau office* means the local administrative office of the Bureau that is the primary point of contact between the Bureau and the tribe.

*Local Bureau Official* means the Superintendent, Field Representative, or other official having delegated Federal administrative responsibility under this part.

*Mailout ballot* means a ballot the Secretarial Election Board provides to a registered voter to allow him or her to vote by mail in an election conducted entirely by mail.

*Member of a tribe* or *tribal member* means any person who meets the criteria for membership in a tribe and, if required by the tribe, is formally enrolled.

*Petition* means the official document submitted by the petitioners to the Secretary to call a Secretarial election for the purpose of adopting or ratifying a new governing document, amending the tribe's existing governing document, or revoking the tribe's existing governing document.

*Petitioner* means a tribal member who is 18 years of age or older (and, if the tribe's governing document imposes additional requirements for petitioning, also meets those requirements), and signs a petition.

*Polling site ballot* means the ballot the Secretarial Election Board provides to

a registered voter, allowing him or her to vote when polling sites are required by the amendment and adoption article of the tribe's governing document.

*Recognized governing body* means the tribe's governing body recognized by the Bureau for the purposes of government-to-government relations.

*Registered Voter* means an eligible voter who has registered to vote in the Secretarial election.

*Registered Voters List* means the list of all Registered Voters showing only names and, where applicable, voting districts.

*Registration* means the process by which an eligible voter signs up to vote in the Secretarial election.

*Revocation* means that act whereby the registered voters of a tribe vote to revoke their current governing document.

*Secretarial election* means a Federal election conducted by the Secretary under a Federal statute or tribal governing document under this part.

*Secretarial Election Board* means the body of officials appointed by the Bureau and the tribe (and the spokesperson for petitioners, as applicable) to conduct the Secretarial election.

*Secretary* means the Secretary of the Interior or his or her authorized representative.

*Spoiled ballot* means the ballot is mismarked, mutilated, rendered impossible to determine the voter's intent, or marked so as to violate the secrecy of the ballot.

*Spokesperson for the petitioners or spokesperson* means a tribal member who provides a document signed by other tribal members that provides him or her authority to speak or submit a petition on their behalf.

*Tribal request* means a request that includes all of the components set out in 81.6.

*Tribe* means any Indian or Alaska Native tribe, band, nation, pueblo, village or community that is listed in the FEDERAL REGISTER under 25 U.S.C. 479a–1(a), as recognized and receiving services from the Bureau of Indian Affairs.

*Voting district* means a geographic area established to facilitate the voting process, if required, by the amendment and adoption articles of the tribe's governing document.

## Subpart C—Provisions Applicable to All Secretarial Elections

### § 81.5 What informal review is available to a tribe or petitioner when anticipating adopting or amending a governing document?

A tribe that plans to adopt or amend a governing document or a spokesperson for a petitioner may, but is not required to, submit the proposed document with a request for informal review to the Local Bureau Official.

(a) During the informal review:

(1) Bureau personnel will help the tribal government or petitioner spokesperson in drafting governing documents, bylaws, charters, amendments and revocations, explain the Secretarial election process, and provide guidance on methods for voter education, such as informational meetings.

(2) The Local Bureau Official will review the proposed document and will offer technical assistance and comments to the tribe or petitioner spokesperson, including but not limited to guidance on whether any of the provisions of the proposed document or amendment may be contrary to applicable laws.

(b) The Bureau will provide technical assistance for a petition only upon request of the spokesperson. Bureau personnel will provide a courtesy copy to the tribe's governing body of all correspondence regarding technical assistance to the petitioners. The spokesperson will be responsible for obtaining the approval of the tribal members it represents on changes to the content of the petition.

### § 81.6 How is a Secretarial election requested?

To request a Secretarial election:

(a) The tribe or petitioner must submit:

(1) A duly adopted tribal resolution, tribal ordinance, other appropriate tribal document requesting the Secretary to call a Secretarial election, or, in the absence of an existing governing document or if authorized or required by the existing governing documents, a petition that has been verified by the Bureau as having the minimum

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number of required signatures of tribal members; and

(2) The exact document or amended language to be voted on; and

(b) The tribe must submit a list in an electronically sortable format with names, last known addresses, dates of birth, and voting district, if any, of all tribal members who:

(1) Will be 18 years of age or older within 120 days of the date of the request; and

(2) Meet any other voting restrictions imposed by the tribe's governing document for voting in the Secretarial election.

### § 81.7 What technical assistance will the Bureau provide after receiving a request for election?

After receiving a tribal request for election under § 81.6, the Bureau will provide the following technical assistance.

(a) The Local Bureau Official will review and make a recommendation on the proposed document or amendment, prepare background information on the tribe, and submit to the Authorizing Official.

(b) The Authorizing Official must do all of the following:

(1) Review the proposed document or amendment and offer technical assistance to the tribe (and spokesperson, for petitions);

(2) Consult with the Office of the Solicitor to determine whether any of the provisions of the proposed document or amendment may be contrary to applicable law; and

(3) Notify the tribe (and spokesperson, for petitions) in writing of the results of the review.

(i) If the review finds that a provision is or may be contrary to applicable law, the notification must explain how the provision may be contrary to applicable law and list changes to the document that would be required to allow the Authorizing Official to approve the document as not contrary to applicable law.

(ii) The notification must be sent to the tribe (and spokesperson, for petitions) promptly but in no case less than 30 days before calling the election.

(iii) For IRA elections, the tribe may choose to proceed with the election without incorporating required changes, but the Authorizing Official may not approve election results ratifying provisions that are contrary to applicable law.

(iv) For OIWA elections, the Authorizing Official may not authorize a Secretarial election on any proposed document that contains provisions that may be contrary to applicable law.

### § 81.8 What happens if a governing Federal statute and this part disagree?

If a conflict appears to exist between this part and a specific requirement of the Federal statute, this part must be interpreted to conform to the statute.

### § 81.9 Will the Secretary give deference to the Tribe's interpretation of its own documents?

The Secretary will give deference to the tribe's reasonable interpretation of the amendment and adoption articles of the tribe's governing documents. The Secretary retains authority, however, to interpret tribal law when necessary to carry out the government-to-government relationship with the tribe or when a provision, result, or interpretation may be contrary to Federal law.

### § 81.10 Who may cast a vote in a Secretarial election?

If the tribe:	Then the following individuals may cast a vote:
(a) Is reorganizing under Federal statute for the first time,.	Any member of the tribe who: (1) Will be 18 years of age or older on the date of the Secretarial election; and (2) Has duly registered, regardless of residence or other qualifications contained in the tribe's governing documents or charter
(b) Is already reorganized under Federal statute,.	Any member of the tribe who: (1) Will be 18 years of age or older on the date of the Secretarial election; and (2) Otherwise meets the qualifications required by the tribe's governing documents or charter for that particular type of Secretarial election; and (3) Has duly registered.

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If the tribe:	Then the following individuals may cast a vote:
(c) Is not reorganized under a Federal statute but tribal law requires a Secretarial election.	Any member of the tribe who: (1) Will be 18 years of age or older on the date of the Secretarial election; and (2) Otherwise meets the qualifications, if any, required by the tribe's governing documents or charter for that particular type of Secretarial election, if any; and (3) Has duly registered.

### § 81.11 May a tribe establish a voting age different from 18 years of age for Secretarial elections?

No. A Secretarial election is a Federal election. According to the 26th Amendment of the U.S. Constitution, adopted July 1, 1971, all individuals 18 years of age and older must be allowed to vote in Federal elections.

### § 81.12 What type of electioneering is allowed before and during Secretarial election?

There shall be no electioneering within 50 feet of the entrance of a polling site.

### § 81.13 What types of voting assistance are provided for a Secretarial election?

If polling sites are required by the amendment or adoption article of the tribe's governing document, the Chair of the Secretarial Election Board will:

- (a) Appoint interpreters;
- (b) Ensure that audio or visual aids for the hearing or visually impaired are provided;
- (c) Ensure that reasonable accommodations are made for others with impairments that would impede their ability to vote; and
- (d) Allow the interpreter or Secretarial Election Board member to explain the election process and voting instructions. At the request of the voter, the interpreter or Board member may accompany the voter into the voting booth, but must not influence the voter in casting the ballot.

### § 81.14 May Secretarial elections be scheduled at the same time as tribal elections?

The Secretarial Election Board will, generally, avoid scheduling Secretarial

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elections at the same time as tribal elections to avoid confusion. If the Secretarial Election Board decides to schedule a Secretarial election at the same time as a tribal election, the Secretarial Election Board must clearly inform eligible voters of any differences between the tribal election and the Secretarial election and separate ballots must be used for each type of election.

### § 81.15 How are conflicting proposals to amend a single document handled?

When conflicting proposals to amend a single provision of a tribal governing document or charter provision are submitted, the proposal first received by the Local Bureau Official, if properly submitted as a complete tribal request, must be voted on before any consideration is given other proposals. Other proposals must be considered in order of their receipt if they are resubmitted following final agency action on the first submission. This procedure applies regardless of whether the proposal is a new or revised tribal governing document.

### § 81.16 Who pays for holding the Secretarial election?

(a) A Secretarial election is a Federal election; therefore, Federal funding will be used to cover costs. The Bureau will pay for the costs, unless the tribe has received funding for this function through contracts or self-governance compacts entered into under the Indian Self-Determination and Education Assistance Act, as amended, 25 U.S.C. 450f, *et seq.*

(b) Once a tribe removes the requirement for Secretarial approval, all subsequent elections it holds to amend the governing document are tribal elections and the tribe is responsible for the costs of those elections.

### § 81.17 May a tribe use its funds to pay non-Federal election officials?

A recognized tribal governing body may use tribal funds to compensate non-Federal personnel to respond to the needs of the tribal government in the conduct of the Secretarial election.

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### § 81.18 Who can withdraw a request for a Secretarial election?

The tribe may withdraw the request for Secretarial election in the same manner in which the Secretarial election was requested. The petitioners may withdraw the request for Secretarial election by submitting a new petition, with signatures of at least a majority of the signers of the original petition, seeking withdrawal of the original petition. However, the request for a Secretarial election cannot be withdrawn after the established deadline for voter registration.

## Subpart D— The Secretarial Election Process under the Indian Reorganization Act (IRA)

### § 81.19 How does the Bureau proceed after receiving a request for a Secretarial election?

(a) Upon receiving a request for a Secretarial election, the Local Bureau Official will forward the request to the Authorizing Official with any appropriate background information.

(b) The Authorizing Official will issue a memorandum to the Local Bureau official. The memorandum will do all of the following:

(1) Direct the Local Bureau Official to call and conduct a Secretarial election by one of the following deadlines:

(i) If the tribal request is to amend an existing governing document, within 90 days from the date of receipt of the request;

(ii) If the tribal request is to adopt a new governing document (including an amendment to a governing document in the nature of an entire substitute) or to revoke an existing governing document, within 180 days after receiving the request.

(2) Include as an attachment the document or proposed language to be voted upon;

(3) Include as an attachment the Certificate of Results of Election with instructions to return it after the Secretarial election. The Certificate shall read as follows:

#### CERTIFICATE OF RESULTS OF ELECTION

Under a Secretarial election authorized by (name and title of authorizing official) on

(date), the attached [insert: Governing document and Bylaws, charter of incorporation, amendment or revocation] of the (official name of tribe) was submitted to the registered voters of the tribe and on (date) duly (insert: adopted, ratified, rejected or revoked) by a vote of (number) for and (number) against and (number) cast ballots found spoiled in an election in which at least 30 percent (or such “percentages” as may be required to amend according to the governing document) of the (number) registered voters cast their ballot in accordance with (appropriate Federal statute).

Signed:

(by the Chair of the Secretarial Election Board and Board Members)

Date: \_\_\_\_\_; and

(4) Advise that no changes or modifications can be made to any attached document, without the Authorizing Official’s prior approval.

(c) The Local Bureau Official will appoint a Bureau employee to serve as the Chair of the Secretarial Election Board and notify the tribe of the need to appoint at least two tribal members, who are at least 18 years of age, to the Secretarial Election Board. If the election is to be held as the result of a petition, then the Local Bureau Official will appoint a Bureau employee to serve as the Chair of the Secretarial Election Board and notify the tribe and the spokesperson for the petitioners of the need to appoint one tribal member each, who is at least 18 years of age, to the Secretarial Election Board. If the tribe or spokesperson for the petitioners declines or fails for any reason to make the appointment(s) by close of business on the 10th day after the date the notice letter is issued, the Chair of the Secretarial Election Board must appoint the representative(s), who are tribal members, if available, on the 11th day after the notice letter is issued.

### § 81.20 What is the first action to be taken by the Chair of the Election Board?

Within 5 days after the Secretarial Election Board representatives are appointed, the Chair must hold the first meeting of the Secretarial Election Board to set the election date.

**§ 81.21 What are the responsibilities of the Secretarial Election Board in conducting a Secretarial election?**

The Secretarial Election Board conducts the Secretarial election. Except as provided in § 81.43, decisions of the Secretarial Election Board are not subject to administrative appeal.

**§ 81.22 How is the Secretarial election conducted?**

The Secretarial Election Board:

(a) Uses the list provided in the tribal request as the basis for the Eligible Voters List;

(b) Assembles and mails the Secretarial Election Notice Packet at least 30 days, but no more than 60 days, before the date of the Secretarial election to all persons on the Eligible Voters List;

(c) Confirms that registration forms were received on or before the deadline date;

(d) Retains the completed registration form as part of the record;

(e) Develops the Registered Voters List for posting;

(f) Where the election is conducted entirely by mailout ballot, notes on a copy of the Registered Voters List, by the individual's name, the date the ballot was mailed, and the date the ballot was returned; and

(g) Where polling sites are required and an individual requests an absentee ballot, notes on a copy of the Registered Voters List, by the individual's name, the date his or her absentee ballot request was received, the date the absentee ballot was mailed, and the date the absentee ballot was returned.

**§ 81.23 What documents are included in the Secretarial Election Notice Packet?**

The Secretarial Election Notice Packet includes the following:

(a) Mailout Balloting;

(1) The Secretarial election notice;

(2) A registration form with instructions for returning the completed form by mail;

(3) An addressed envelope with which to return the completed registration form;

(4) If the entire document is to be amended or adopted, a copy of the proposed document including proposed

language; and if applicable, a copy of the current document proposed for change; and

(5) A side-by-side comparison showing the current language to be changed, if applicable, in the left column and the proposed language in the right column.

(b) Polling Sites (if required by the amendment or adoption articles of the tribe's governing document):

(1) The Secretarial election notice;

(2) A registration form with instructions for returning the completed form by mail;

(3) An absentee ballot request form with instructions for returning the completed form by mail;

(4) An addressed envelope with which to return the completed registration form and absentee ballot request form;

(5) If the entire document is to be amended or adopted, a copy of the proposed document including proposed language; and if applicable, a copy of the current document proposed for change; and

(6) A side-by-side comparison showing the current language to be changed, if applicable, in the left column and the proposed language in the right column.

**§ 81.24 What information must be included on the Secretarial election notice?**

The Secretarial election notice must contain all of the following items.

(a) The date of the Secretarial election;

(b) The date which registration forms must be received by the Secretarial Election Board;

(c) A description of the purpose of the Secretarial election;

(d) A description of the statutory and tribal authority under which the Secretarial election is held;

(e) The deadline for filing challenges to the Registered Voters List;

(f) If polling sites are to be used, the date an absentee ballot request must be received by the Secretarial Election Board;

(g) A statement as to whether the Secretarial election is being held entirely by mailout ballot or with polling sites, in accordance with the tribe's



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governing document's amendment or adoption articles; and

(h) The locations and hours of established polling sites, if any.

### **§ 81.25 Where will the Secretarial election notice be posted?**

The Secretarial election notice will be posted at the local Bureau office, if any, the tribal headquarters, and other public places determined by the Secretarial Election Board.

### **§ 81.26 How does BIA use the information I provide on the registration form?**

We use the information you provide on the registration form to determine whether you will be registered for and vote in the Secretarial election. The registration form must include the following statements:

(a) Completing and returning this registration is necessary if you desire to vote in the forthcoming Secretarial election;

(b) This form, upon completion and return to the Secretarial Election Board, will be the basis for determining whether your name will be placed upon the list of registered voters, and therefore may receive a ballot, and

(c) Completion and return of this form is voluntary, but failure to do so will prevent you from participating in the Secretarial election.

### **§ 81.27 Must I re-register if I have already registered for a tribal or Secretarial election?**

Yes. A Secretarial election is a Federal election and you must register for each Secretarial election.

### **§ 81.28 How do I submit my registration form?**

You must submit your registration form to the Secretarial Election Board by U.S. mail.

### **§ 81.29 Why does the Secretarial Election Board compile a Registered Voters List?**

The Registered Voters List is a list of eligible voters who have registered and are, therefore, entitled to vote in the Secretarial election. We use this list, after all challenges have been resolved, to determine whether voter participation in the Secretarial election satis-

fies the minimum requirements of the tribe's governing documents and Federal law.

### **§ 81.30 What information is contained in the Registered Voters List?**

The Registered Voters List must contain the names, in alphabetical order, of all registered voters and their voting districts, if voting districts are required by the tribe's governing document's amendment or adoption articles.

### **§ 81.31 Where is the Registered Voters List posted?**

A copy of the Registered Voters List, showing only names and, where applicable, voting districts, must be posted at the local Bureau office, the tribal headquarters, and other public places the Secretarial Election Board designates.

### **§ 81.32 May the Registered Voters List be challenged?**

(a) It is possible to challenge in writing the inclusion or exclusion or omission of a name on the Registered Voters List. The written challenge must be received by the Secretarial Election Board by the established deadline and include the following:

(1) The name of the affected individual or individuals;

(2) The reason why the individual's name should be added to or removed from the Registered Voters List; and

(3) Supporting documentation.

(b) If an individual failed to submit his or her registration form on time, that individual is precluded from challenging the omission of his/her name from the list.

### **§ 81.33 How does the Secretarial Election Board respond to challenges?**

All challenges must be resolved by close of business on the third day after the date of the challenge deadline established by the Secretarial Election Board and all determinations of the Secretarial Election Board are final for the purpose of determining who can vote in the Secretarial election.

(a) If the challenge was received after the deadline, the Secretarial Election Board must deny the challenge.

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(b) If the challenge was received on or before the deadline, the Secretarial Election Board will decide the challenge by reviewing the documentation submitted. Thereafter, the Secretarial Election Board will include the name of any individual whose name should appear or remove the name of any individual who should not appear on the Registered Voters List.

### § 81.34 How are the official ballots prepared?

(a) The Secretarial Election Board must prepare the official ballot so that it is easy for the voters to indicate a choice between no more than two alternatives (*i.e.*, adopting or rejecting the proposed language). Separate ballots should be prepared for each proposed amendment or a single ballot for adoption of a proposed document (with a reference to the document provided in the Secretarial election notice).

(b) The following information must appear on the face of the mailout or absentee ballot:

#### OFFICIAL BALLOT

(Facsimile Signature)

CHAIR, SECRETARIAL ELECTION BOARD

(c) When polling places are required by the tribe's governing document, the official ballot may be a paper ballot, voting machine ballot, or other type of ballot supporting the secret ballot process.

### § 81.35 When must the Secretarial Election Board send ballots to voters?

(a) Unless the amendment or adoption articles of the tribe's governing document require the use of polling sites in the election, the election must be conducted entirely by mailout ballots, and the Secretarial Election Board must send mailout ballots to registered voters promptly upon completion of the Registered Voters List.

(b) When the amendment or adoption articles of the tribe's governing document require the use of polling sites in the election, the Secretarial Election Board must send an absentee ballot to every registered voter who requests an absentee ballot, as long as the request

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is received before the Secretarial election date.

(c) All mailout or absentee ballot deliveries must be via U.S. Mail or by hand-delivery to the location identified in the Secretarial election notice before the date of the Secretarial election.

### § 81.36 What will the mailout or absentee ballot packet include?

The mailout or absentee ballot packet contains:

(a) A cover letter summarizing what the ballot packet contains and, if there is more than one ballot included in the packet, enumerating the ballots and advising voters to give consideration to each enumerated ballot;

(b) A mailout or absentee ballot (or, if several amendments are to be voted on, multiple ballots, each printed on a different colored sheet if possible);

(c) Instructions for voting by mailout or absentee ballot including the date the ballot must be received by the Secretarial Election Board;

(d) An inner envelope with the words "Mailout Ballot" or "Absentee Ballot" printed on the outside, as applicable;

(e) A copy of the proposed governing document or amendment, if the full text is not printed on the mailout ballot and if the entire document is to be amended or adopted; and

(f) A pre-addressed outer envelope with the following certification printed on the back:

I, (print name of voter), hereby certify I am a registered voter of the (name of Tribe); I will be 18 years of age or older on the day of the Secretarial election; I am entitled to vote in the Secretarial election to be held on (date of Secretarial election). I further certify that I marked the enclosed mailout ballot in secret.

Signed:  
(voter's signature) \_\_\_\_\_

### § 81.37 How do I cast my vote at a polling site?

If polling sites are required by the tribe's governing document's amendment or adoption articles, the Secretarial Election Board will establish procedures for how polling site ballots will be presented and collected, including, but not limited to, paper ballots, voting machines, or other methods supporting a secret ballot.

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### § 81.38 When are ballots counted?

The ballots will be counted under the supervision of the Secretarial Election Board, after the deadline established for receiving all ballots or closing of the polls, if polling sites are required by the tribe's governing document's amendment or adoption articles.

### § 81.39 How does the Board determine whether the required percentage of registered voters have cast ballots?

The Secretarial Election Board must count the number of valid ballots and cast spoiled ballots to determine total voter participation. The Board must take the total voter participation and divide it by the total number of Registered Voters. This total is used to determine whether the percentage of Registered Voters who cast votes meets the requirements of the tribe's governing documents or Federal statute that requires at least 30 percent voter participation. For example:

(a) If there were 200 registered voters of which 75 cast valid ballots and 5 cast spoiled ballots for a total of 80 cast ballots ( $75 + 5 = 80$ ). The percentage of voter participation would be determined as follows:

Total number of votes cast (80) divided by the total number registered voters (200) or  $80 \div 200 = 0.40$  or 40 percent voter participation.

(b) This example meets the Federal statutory requirement of at least 30 percent voter participation.

### § 81.40 What happens if a ballot is spoiled before it is cast?

If a ballot is spoiled before it is cast, this section applies.

(a) The registered voter may return the spoiled ballot to the Secretarial Election Board by mail or in person at the local Bureau office with a request for a new ballot before the election date. The new ballot will be promptly provided to the registered voter. The Secretarial Election Board must retain all "spoiled uncast ballots" for recordkeeping purposes.

(b) If polling sites are required, the voter may return the spoiled ballot to the polling site worker and request a new ballot. Upon receiving the new ballot, the voter must then complete the voting process. The polling site worker

will mark the spoiled ballot "spoiled uncast" and record that the ballot has been spoiled. The polling site worker must retain all "spoiled uncast ballots" for recordkeeping purposes.

### § 81.41 Who certifies the results of the Election?

The Chair and all members of the Secretarial Election Board must be present during the counting of the ballots and must sign the Certificate of Results of Election.

### § 81.42 Where are the results of the Election posted?

The Secretarial Election Board must post a copy of the Certificate of Results of Election at the local Bureau office, the tribal headquarters, and at other public places listed in the election notice. The Board also has the discretion to publicize the results using additional methods, such as by posting on the tribe's Web site.

### § 81.43 How are the results of the Election challenged?

Any person who was listed on the Eligible Voters List and who submitted a voter registration form may challenge the results of the Secretarial election. The written challenge, with substantiating evidence, must be received by the Chairman of the Secretarial Election Board within 5 days after the Certificate of Results of Election is posted, not including the day the Certificate of Results of Election is posted. Challenges received after the deadline for filing challenges will not be considered. If the third day falls on a weekend or Federal holiday, the challenge must be received by close of business on the next business day.

### § 81.44 What documents are sent to the Authorizing Official?

The Chair of the Secretarial Election Board must transmit all documents pertaining to the Secretarial election to the Authorizing Official, including:

- (a) The original text of the material voted on;
- (b) The Eligible Voters List;
- (c) The Registered Voters List;
- (d) The Secretarial Election Notice Packet;

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(e) Any challenges to the Secretarial election results; and

(f) The Certificate of Results of Election.

### **§ 81.45 When are the results of the Secretarial election final?**

The Authorizing Official will review election results and challenges, if any, as follows:

(a) If a challenge alleges errors that would invalidate the election, and the Authorizing Official sustains any such challenges, the Authorizing Official must authorize a recount or call for a new Secretarial election. The Authorizing Official will take the appropriate steps necessary to provide for a recount or a new Secretarial election.

(b) If all challenges are denied or dismissed, the Authorizing Official will review and make a decision based on the following:

(1) The percentage of total votes cast was at least 30 percent, or other percentages required according to the tribe's governing document's amendment or adoption articles.

(2) The voters rejected or accepted the proposed document or each proposed amendment; and

(3) The proposed documents or amendments are not contrary to Federal law.

(c) The Authorizing Official must notify, in writing, the recognized governing body of the tribe, and the Director of the Bureau, of the following:

(1) The decisions on challenges;

(2) The outcome of the voting;

(3) Whether the proposed governing document, proposed amendment(s) or charter or charter amendments are approved or ratified, or if the proposed documents contain language that is contrary to Federal law and, therefore, disapproved; and

(4) That the decision is a final agency action.

(d) The Authorizing Official must:

(1) Forward the original text of the document, Original Certificate of Approval or Disapproval, and the Certificate of Results of Election to the tribe and a copy of all documents to the Bureau Director; and

(2) Retain, as required by the Records Disposition Schedule, a copy of all doc-

ument(s) relevant to the Secretarial election.

(e) If the certified election results show that the tribal members ratified the documents, but the Authorizing Official does not approve or disapprove the governing document or amendment by close of business on the 45th day after the date of the Secretarial election, the Secretary's approval of the documents must be considered as given.

(f) The Authorizing Official's decision to approve or disapprove the governing document or amendment is a final agency action.

### **Subpart E—The Secretarial Election Process Under the Oklahoma Indian Welfare Act (OIWA)**

#### **§ 81.46 How does the Bureau proceed upon receiving a request for an OIWA Election if no provisions are contrary to applicable law?**

If the proposed document does not contain any provision that may be contrary to applicable law, the Bureau will take the following steps.

(a) The Authorizing Official will issue a memorandum to the Local Bureau Official:

(1) Approving the proposed document or proposed amendments;

(2) Authorizing the Local Bureau Official to call and conduct a Secretarial election, within 90 days from the date of receiving the tribal request;

(3) Attaching the document or proposed language to be voted upon;

(4) Attaching the Certificate of Results of Election, with instructions to return it at the conclusion of the Secretarial election. The Certificate shall read as follows:

#### **CERTIFICATE OF RESULTS OF ELECTION**

Under a Secretarial election authorized by (name and title of authorizing official) on (date), the attached [insert: Governing document and Bylaws, charter of incorporation, amendment or revocation] of the (official name of tribe) was submitted to the registered voters of the tribe and on (date) duly (insert: adopted, ratified, rejected or revoked) by a vote of (number) for and (number) against and (number) cast ballots found spoiled in an election in which at least 30

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percent (or such “percentages” as may be required to amend according the governing document) of the (number) registered voters cast their ballot in accordance with (appropriate Federal statute).

Signed: \_\_\_\_\_

(by the Chair of the Secretarial Election Board and Board Members)

Date: \_\_\_\_\_; and

(5) Advising that no changes or modifications can be made to any of the attached documents, without prior approval from the Authorizing Official.

(b) The Local Bureau Official will appoint the Chair of the Secretarial Election Board and notify the tribe of the need to appoint at least two tribal members to the Secretarial Election Board. If the election is to be held as the result of a petition, then the Local Bureau Official will appoint a Bureau employee to serve as the Chair of the Secretarial Election Board and notify the tribe and the spokesperson for the petitioners of the need to appoint one tribal member each, who is at least 18 years of age, to the Secretarial Election Board. If the tribe or spokesperson declines or fails for any reason to make the appointment(s) by close of business on the 10th day after the date the notice letter is issued, the Chair of the Secretarial Election Board must appoint the representative(s), who are tribal members, if available, on the 11th day after the notice letter is issued.

### § 81.47 How is the OIWA Secretarial election conducted?

After the Chair of the Election Board receives the authorization of the Election, the Chair of the Secretarial Election Board will conduct the election following the procedures set out in §§ 81.19 through § 81.45 of subpart D.

### § 81.48 When are the results of the OIWA Election final?

(a) If a challenge is sustained and has an effect on the outcome of the election, the Authorizing Official must authorize a recount or call for a new Secretarial election. The Authorizing Official will take the appropriate steps necessary to provide for a recount or a new Secretarial election.

(b) If the challenges are denied or dismissed, the Authorizing Official will review and determine whether:

(1) The percentage of total votes cast was at least 30 percent, or such percentages as may be required according to the tribe’s governing document’s amendment or adoption articles; and

(2) The voters ratified or rejected the proposed document, proposed amendment or revocation.

(c) The Authorizing Official must notify, in writing, the recognized governing body of the tribe, and the Director of the Bureau, of the following:

(1) The decisions on challenges;

(2) The outcome of the voting; and

(3) That the proposed document, proposed amendments or revocation becomes effective as of the date of the Secretarial election; and

(4) That the decision is a final agency action.

(d) The Authorizing Official must:

(1) Forward the original text of the document, Original Certificate of Approval, and the Certificate of Results of Election to the tribe and a copy of all documents to the Director of the Bureau; and

(2) Retain, as required by the Records Disposition Schedule, a copy of all document(s) relevant to the Secretarial election.

## Subpart F—Formulating Petitions To Request a Secretarial Election

### § 81.49 What is the purpose of this subpart?

This subpart establishes requirements for formulating and submitting petitions to request the Secretary to call a Secretarial election as required by the governing documents or charters of incorporation of tribes issued under the Indian Reorganization Act (IRA), 25 U.S.C. 476 and 477, as amended, and the Oklahoma Indian Welfare Act (OIWA), 25 U.S.C. 503. This Subpart may also be used by a federally recognized tribe that is adopting a governing document, under Federal statute, for the first time.

### § 81.50 Who must follow these requirements?

Any tribe meeting the criteria in paragraphs (a) or (b) of this section must follow the requirements of this subpart.

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(a) A tribe whose governing document or charter of incorporation provides for petitioning the Secretary to call a Secretarial election for any of the following purposes:

(1) Amending or revoking the governing document;

(2) Amending a charter of incorporation ratified under 25 U.S.C. 477 of the IRA before May 24, 1990 where the amendments section or article specifically requires it;

(3) Amending or ratifying a charter of incorporation under 25 U.S.C. 503 of the OIWA; or

(4) Taking any other action authorized by the governing document or charter of incorporation.

(b) A federally recognized tribe, without an existing governing document, adopting a governing document under Federal statute, for the first time.

### **§81.51 How do tribal members circulate a petition to adopt or amend the tribe's governing document?**

Tribal members wishing to circulate a petition to adopt or amend the tribe's governing document may submit the proposed document to the Local Bureau Official for review and comment. The Local Bureau Official may help the petitioners in drafting governing documents, bylaws, charters, amendments and revocations. The Bureau may also explain the Secretarial election process.

### **§81.52 Who may initiate a petition?**

A member of the tribe who is 18 years of age or older whose tribe's governing document or charter of incorporation permits tribal members to petition the Secretary to authorize a Secretarial election.

### **§81.53 Who may sign a petition?**

A member of the tribe who is 18 years of age or older may sign a petition. Where the tribe's governing document imposes additional requirements (other than age requirements) on who may petition, those requirements also apply.

### **§81.54 Who is authorized to submit a petition to the Secretary?**

The petitioners must designate a spokesperson to submit the petition

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and act on their behalf for the petitioning process.

### **§81.55 How is the petition formatted and signed?**

(a) Each page of the petition must contain:

(1) A summary of the purpose of the petition, or proposed document, or proposed amendment language;

(2) Numbered lines for each individual to print their legal name, current mailing address, date, and signature, and;

(3) The following declaration at the bottom of each page to confirm the collector was present when each signature was collected:

"I, (*Collector's Printed Name*) , hereby declare that each individual whose name appears above signed and dated the petition. To the best of my knowledge, the individual signing the petition is a member of the tribe and is 18 years or older.

(Signature of Collector)

(*Notary Certification*)",

(b) Each individual must print their legal name, current mailing address, date, and sign on a numbered line.

(c) Each collector must complete and sign the declaration on each page in front of a notary, who will sign and certify.

### **§81.56 Do petitions have a minimum or maximum number of pages?**

A petition can have as many pages as necessary to obtain the required signatures. However, each page must have the information shown in §81.58 of this subpart.

### **§81.57 How do I determine how many signatures are needed for a petition to be valid?**

(a) For a tribe whose governing document or charter of incorporation provides for petitioning the Secretary to call a Secretarial election:

(1) The spokesperson for the petitioners may ask the tribe or the Local Bureau Official how many signatures are required.

(2) The Local Bureau Official will:

(i) Contact the tribal governing body to obtain the current number of tribal members, 18 years of age or older, to

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determine the number of tribal members who must sign a petition as required by the tribe's governing document; and

(ii) Notify the petitioners' spokesperson how many signatures are required and that the number is valid for 180 days from the date of this notification.

(b) For a federally recognized tribe adopting a governing document under Federal statute for the first time, the petition must have signatures of 50 percent of the tribal members who are 18 years of age or older.

### **§ 81.58 How long do tribal members have to gather the signatures?**

Tribal members have one year from the date of the first signature to gather the required signatures.

### **§ 81.59 How does the spokesperson file a petition?**

The spokesperson must submit the original petition to the Local Bureau Official.

### **§ 81.60 How does the Local Bureau Official process the petition?**

(a) The Local Bureau Official must, on the date of receipt, date stamp the petition to record the Official Filing Date, and make four copies of the petition for use as follows:

(1) Posting at the local Bureau office for 30 days from the Official Filing Date, including a statement of the proposal contained in the petition and instructions for filing a challenge;

(2) Use in determining sufficiency of petition; and

(3) For viewing at the Local Bureau Office by a member of the tribe, 18 years of age or older.

(b) The Local Bureau Official must, within one week of the Official Filing Date:

(1) Provide the spokesperson written acknowledgment of receiving the petition, which contains the Official Filing Date, the exact number of signatures submitted on the petition, and the statement "The petitioners may not add or withdraw any signatures from the petition after the Official Filing Date"; and

(2) Provide a copy of the written acknowledgment of receipt and petition

to the recognized tribal governing body.

(c) The Local Bureau Official must:

(1) Consult with the Office of the Solicitor to determine if any of the provisions that are the subject of the petition are or may be contrary to applicable law; and

(2) If it appears that a provision is or may be contrary to applicable law, notify the petitioner's spokesperson in writing (with a copy to the recognized tribal governing body) how the provision may be contrary to applicable law.

(d) The Local Bureau Official must promptly notify the petitioners (with a copy to the recognized tribal governing body) of any problems identified under paragraph (c) of this section at least 30 days before calling the election.

### **§ 81.61 How can signatures to the petition be challenged?**

Any member of the tribe, 18 years of age or older, may challenge in writing the signatures appearing on the petition. The challenge must be submitted to the Local Bureau Official, within 30 days of the Official Filing Date of the petition and must:

(a) Identify the page and line on which a signature appears; and

(b) Provide documentation supporting a challenge that at least one of the following is true:

(1) A signature was forged;

(2) An individual was ineligible to sign the petition;

(3) A petition page is inconsistent or improperly formatted; or

(4) A petition page contains an incomplete or un-notarized declaration statement.

### **§ 81.62 How is the petition validated?**

(a) The Local Bureau Official must:

(1) Confirm the petition has the required number of signatures;

(2) Indicate any signatures appearing more than once and include only one in the count;

(3) Make recommendations regarding any challenge to the validity of signatures based upon the documentation provided by the challenger; and

(4) Verify the petitioning procedures complied with this Subpart.

(5) Transmit within 45 calendar days of the Official Filing Date the original

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petition, challenges, and recommendations to the Authorizing Official.

(b) The Authorizing Official must within 60 calendar days of the Official Filing Date:

(1) Determine whether the petition complies with the requirements of this Subpart;

(2) Inform the spokesperson for the petitioners and the recognized tribal governing body, in writing, whether the petition is valid, the basis for that determination, and a statement that the decision of the Authorizing Official is a final agency action.

(i) If the petition is determined valid for the purposes of calling a Secretarial election, it will be deemed a “tribal request” for the purposes of this part, and the Authorizing Official will instruct the Local Bureau Official to call and conduct the Secretarial election in accordance with §§81.19 through 81.45 of subpart D.

(ii) If the petition is determined invalid, the Authorizing Official will notify the spokesperson for the petitioners, with a courtesy copy to the tribe’s governing body, that the petition was not valid and a Secretarial election will not be called.

### § 81.63 May the same petition be used for more than one Secretarial election?

No. A petition may not be used for more than one Secretarial election. Each request for a Secretarial election requires a new petition.

## PART 82 [RESERVED]

## PART 83—PROCEDURES FOR FEDERAL ACKNOWLEDGMENT OF INDIAN TRIBES

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